

JAN 13 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD RICHARD,

Plaintiff - Appellant,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS; et al.,

Defendants - Appellees.

No. 03-15801

D.C. No. CV-02-05513-JSW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeffrey S. White, District Judge, Presiding

Submitted January 9, 2006**

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

California state prisoner Richard Richard appeals pro se the district court's judgment dismissing his 42 U.S.C. § 1983 action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to state

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

a claim under the screening provisions of 28 U.S.C. § 1915A, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we affirm.

The district court properly dismissed Richard's due process claim because any procedural problems in Richard's first two disciplinary hearings were remedied by the third hearing held on January 9, 2002, and Richard does not challenge the constitutionality of the third hearing. *See Lee v. County of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Raditch v. United States*, 929 F.2d 478, 481 (9th Cir. 1991) (holding that the violation of procedural due process requires only a procedural correction and not a reinstatement of the substantive right).

The district court properly dismissed Richard's Eighth Amendment claim because disciplinary segregation, without more, does not constitute cruel and unusual punishment. *See May v. Baldwin*, 109 F.3d 557, 565-556 (9th Cir. 1997).

AFFIRMED.